

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL NO. 3:09CV310
(3:00CR73)

JAMES E. DAVIS,)	
)	
Petitioner,)	
)	
Vs.)	<u>ORDER OF DISMISSAL</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

THIS MATTER is before the Court on Petitioner's motion to defer future payments on his restitution balance until his release from prison, received June 9, 2009; another motion to defer his restitution payments until his release, received July 16, 2009; and his petition for a writ of *quo warranto* to defer his restitution payments, received July 20, 2009.

The Court construes these motions collectively as a petition under 28 U.S.C. § 2241 since they only challenge[] the implementation of the restitution portion of his sentence." ***United States v. Childs*, 126 F. App'x 96, 97 (4th Cir. 2005).** As such, the petition must be brought in the district in which the Petitioner is currently incarcerated. Therefore, this Court must

make a determination whether to transfer this action to the district court of Petitioner's confinement or dismiss the action without prejudice to refiling the petition in the appropriate district court. *Id.* The Court finds that the interests of justice would best be served by dismissing this action without prejudice and permitting the Petitioner to refile same in the appropriate district court.

IT IS, THEREFORE, ORDERED that this action is hereby
DISMISSED WITHOUT PREJUDICE.

Signed: August 3, 2009

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

